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No. 80

In the Supreme Court of the United States

OCTOBER TERM, 1946

JACK PARKER ET AL., PETITIONERS

v.

PAUL A. PORTER, PRICE ADMINISTRATOR

ON WRIT OF CERTIORARI TO THE UNITED STATES EMERGENCY COURT OF APPEALS

BRIEF FOR THE RESPONDENT

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	2
Statute and regulations involved	2
Statement	2
Summary of argument	5
Argument:	
I. Neither the Act nor the Rent Regulation confers upon tenants private rights to possession of housing accommodations which they may assert in the administrative and judicial review proceedings provided by the Act	8
A. The Act itself confers no private rights upon tenants to possession of housing accommodations	8
B. The restrictions imposed by Section 6 of the Rent Regulation upon the rights of landlords to evict tenants do not create private rights to possession in individual tenants	9
C. Sections 203 and 204 of the Act afford administrative and judicial review only to sellers of commodities, buyers in the course of trade or business, and landlords	15
II. The fact that petitioners were permitted to participate in the proceedings before the area rent director did not confer upon them the right to protest	28
Conclusion	31
Appendix	32

CITATIONS

Cases:	
Alabama Power Co. v. *Ickes*, 302 U. S. 464	17
Allied Foods v. *Bowles*, 151 F. 2d 449	27
Amalgamated Utility Workers (C. I. O.) v. *Consolidated Edison Co. of New York*, 309 U. S. 261	16
American Power & Light Co. v. *Securities and Exchange Commission*, 325 U. S. 385	17
Bowles v. *Willingham*, 321 U. S. 503	22
Brand v. *Chicago Housing Authority*, 120 F. 2d 786	11
Buka Coal Co. v. *Brown*, 133 F. 2d 949	21
Columbia Broadcasting System v. *United States*, 316 U. S. 407	17

Cases—Continued Page.
Federal Communications Commission v. *National Broadcasting Co.*, 319 U. S. 239 17
Federal Communications Commission v. *Sanders Bros. Radio Station*, 309 U. S. 470 17
Federal Trade Commission v. *Klesner*, 280 U. S. 19 16
Gemsco, Inc. v. *Walling*, 324 U. S. 244 10
Gillespie-Rogers-Pyatt Co., Inc. v. *Bowles*, 144 F. 2d 361 22
Heinz v. *Bowles*, 150 F. 2d 546, certiorari denied, 326 U. S. 719 26
Illinois Packing Company v. *Bowles*, 147 F. 2d 554 ..... 15, 24, 25, 27, 28
Illinois Packing Company v. *Snyder*, 151 F. 2d 337 ..... 24, 25, 26, 27, 28
Massachusetts v. *Mellon*, 262 U. S. 447 27
Perkins v. *Lukens Steel Co.*, 310 U. S. 113 17
Porter v. *Dicken*, No. 1118, O. T. 1945 (May 27, 1946) 12
Porter v. *Lee*, Nos. 1116–1117 O. T. 1945 (May 27, 1946) 9, 12
Sprunt & Son v. *United States*, 281 U. S. 249 30
Stark v. *Wickard*, 321 U. S. 288 ..... 9, 17, 27
Taylor v. *Brown*, 137 F. 2d 654, certiorari denied, 320 U. S. 787 9
Tennessee Electric Power Co. v. *Tennessee Valley Authority*, 306 U. S. 118 17
315 West 37th Street Realty Company, Inc. v. *Porter*, 156 F. 2d 982 22
United States v. *Public Utilities Commission*, 151 F. 2d 609 17
Yakus v. *United States*, 321 U. S. 414 22

Statutes:
District of Columbia Emergency Rent Act 55 Stat. 788 21
District of Columbia Rent Act 41 Stat. 297 21
Emergency Price Control Act of 1942, as amended, 56 Stat. 23; 58 Stat. 632; 50 U. S. C. App., Supp. V, 901 *et seq.*:
Sec. 2 ..... 11, 32
Sec. 2 (b) 2, 8
Sec. 2 (c) 33
Sec. 2 (d) 2, 8, 13, 34
Sec. 3 (c) 5, 27, 35
Sec. 4 (a) 20, 35
Sec. 4 (b) 5, 8, 35
Sec. 4 (d) 9, 35
Sec. 6 (b) 3
Sec. 203 ..... 6, 7, 11, 12, 23
Sec. 203 (a) 14, 15, 16, 20, 36
Sec. 204 ..... 6, 11, 23
Sec. 204 (a) 15, 37
Sec. 205 (a) 6
Sec. 205 (c) 20, 38

Regulations: Page.

Rent Regulation for Housing for New York City Defense-Rental Area Amendment No. 17, 8 F. R. 13914, 10 F. R. 1974:

Sec. 5 (c) 29, 41
Sec. 6 ..... 5, 13
Sec. 6 (a) 10, 43
Sec. 6 (b) (1) 10, 45
Sec. 6 (b) (2) 10, 11, 46
Sec. 6 (b) (3) 10, 11, 48
Sec. 6 (d) 50
Sec. 6 (e) 11, 51

Revised Procedural Regulation No. 1, Sec. 24, 7 F. R. 8961 ..... 16, 24, 27, 28, 39

Revised Procedural Regulation No. 3, 8 F. R. 526:

Sec. 1300.205 ..... 29, 40
Sec. 1300.206 ..... 7, 28, 40
Sec. 1300.216 ..... 6, 16, 40

Miscellaneous:

87 Cong. Rec. 9211 19
87 Cong. Rec. 9225–9226 18
87 Cong. Rec. 9247 18
88 Cong. Rec. 94–98 18
88 Cong. Rec. 664 19
Hearings, House Committee on Banking and Currency, on H. R. 5479, superseded by H. R. 5990 (77th Cong., 1st sess.) 8
Hearings, House Committee on Banking and Currency, on H. R. 4376 (78th Cong., 2d sess.) 21
Hearings, Senate Committee on Banking and Currency, on H. R. 5990 (77th Cong., 1st sess.) 19, 20
Hearings, Senate Committee on Banking and Currency, on S. 1764 (78th Cong., 2d sess.) 21
Hearings, Senate Committee on Banking and Currency, on S. J. Res. 30 (79th Cong., 1st sess.) 21
H. Rep. No. 1409, on H. R. 5990 (77th Cong., 1st sess.) 8, 17
S. Rep. No. 931, on H. R. 5990 (77th Cong., 2d sess.) 8, 19
Seventeenth Quarterly Report, Office of Price Administration, H. Doc. No. 711 (79th Cong., 2d sess.) 24
Statement of Reasons accompanying Amendment 17 to the Rent Regulation for Housing for the New York City Defense-Rental Area (Pike and Fischer, OPA Service, Vol. 14, pp. 206: 393-T, U, and V) 11, 51

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OPINIONS BELOW

The majority, concurring, and dissenting opinions of the United States Emergency Court of Appeals (R. 63–82) are reported in 154 F. 2d 830.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered on March 13, 1946 (R. 83). The petition for writ of certiorari was filed in this Court on April 8, 1946. Certiorari was granted on May 13, 1946 (R. 85). The jurisdiction of this Court is invoked under Section 204 (d) of the Emergency Price Control Act, as amended (56 Stat. 23; 50 U. S. C. App., Supp.

V, 924 (d)), making applicable Section 240 of the Judicial Code, as amended (28 U. S. C. 347).

QUESTIONS PRESENTED

1. Whether under Section 203 (a) of the Act a tenant is a person "subject to" an order of the Price Administrator authorizing the owner of particular rented property situated in a "defense-rental area" to proceed to enforce whatever right he may have at local law to evict the tenant, and therefore is entitled to file a protest against, and obtain judicial review of, such order.

2. Whether the Emergency Price Control Act, when construed to deny to a tenant the right of administrative and judicial review of an order authorizing a landlord to exercise his right at local law to evict the tenant, deprives the tenant of his property without due process of law within the meaning of the Fifth Amendment to the United States Constitution.

STATUTE AND REGULATIONS INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended (herein sometimes termed "the Act"), the Rent Regulation for Housing for the New York City Defense-Rental Area (herein sometimes termed "the Rent Regulation"), and the other regulations involved, are set forth in the Appendix, *infra*, pp. 32–56.

STATEMENT

Section 2 (b) of the Emergency Price Control Act, as amended, *infra*, pp. 32–33, authorizes the

Price Administrator to establish by regulation or order maximum rents for defense-area housing accommodations situated in defense-rental areas designated by him. Section 2 (d) of that Act, *infra,* p. 34, provides that the Administrator, in order to effectuate the purposes of the Act, may by regulation or order prohibit "speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment * * * are likely to result in * * * rent increases. Section 6 of the Rent Regulation for Housing for the New York City Defense-Rental Area, *infra,* pp. 43–51, issued by the Price Administrator under the authority of the Act, provides that purchasers of stock in a cooperative organization who are entitled by virtue of their stock ownership to proprietary leases on the apartments in the structure owned by the organization, may not exercise their rights at local law to evict the tenants occupying such apartments until the Price Administrator has issued certificates authorizing such purchasers to pursue their remedies for removal or eviction of the tenants in accordance with the requirements of local law. Sections 6 (b) (2) and 6 (b) (3) set forth the conditions under which the Administrator will grant such certificates.

The 55 Corporation is the owner of an apartment dwelling situated at No. 55 Central Park

West, New York City (R. 2). Purchasers of stock in the 55 Corporation, who through their ownership of the stock were each entitled to a proprietary lease on one of the apartments under a cooperative plan, filed with the Office of Price Administration applications for certificates which would authorize them to exercise their rights under the local law to evict petitioners, who resided in the apartment dwelling as tenants of the corporation (R. 5–6, 20). After hearings held before the area rent director, of which petitioners were notified and in which they participated, the applications were denied by that officer (R. 7–9), and the denial was subsequently affirmed by the regional rent administrator (R. 8). A protest against the order of denial filed by the purchasers of the stock with the Office of Price Administration was sustained by the Price Administrator, and, in accordance with that action, an order was issued by him granting the requested certificates (R. 21). Petitioners, the tenants in possession, then filed with the Price Administrator a joint protest against the order granting the certificates to the stockholders (R. 21). The Price Administrator did not consider on the merits the allegations of the protest, but dismissed it on the ground that petitioners were not "subject to" the order in question as required by Section 203 (a) of the Act (R. 21–22). Thereafter, petitioners filed a complaint in the Emergency Court of Appeals,

claiming to be aggrieved by the failure of the Administrator to consider the protest on its merits (R. 1–16). Upon motion of the Price Administrator, the Emergency Court of Appeals dismissed the complaint, holding that petitioners were not "subject to" the order in question; that they therefore had no standing to file a protest under Section 203 (a) of the Act; and that as a consequence they had no standing to maintain a complaint in that court (R. 19, 63–82).

SUMMARY OF ARGUMENT

I

Neither the Act nor the Rent Regulation confers upon tenants private rights to possession of housing accommodations which they may assert in the review proceedings provided for by the Act.

A. The Act itself confers no such rights. Except for Section 4 (b), there is no provision in the Act limiting rights of landlords to regain possession of premises. The power of the Administrator under Section 2 (d) of the Act, to regulate or prohibit speculative or manipulative practices was conferred by the Act only for the purpose of effecting the stabilization of rents, and not to protect individual tenants in their possession of housing accommodations.

B. The conditional restriction imposed on landlords by Section 6 of the Rent Regulation with respect to the eviction of tenants does not operate

to create private rights to possession in tenants. While the section does give to tenants some added protection which they would not otherwise have, it was not intended by the Congress to create individual rights, but was intended solely to protect the public generally against action by landlords which might imperil rent stabilization. Petitioners' asserted rights to possession are no different from the interest of tenants generally in stabilized rents. Petitioners, therefore, had no property rights of which they could be deprived.

C. Sections 203 and 204 of the Act were designed to afford administrative and judicial review only to sellers of commodities, business buyers, and landlords. The legislative history of the Act amply demonstrates that the phrase "subject to," as used in Section 205 (a), was meant to be limited accordingly. The Congress contemplated that the Price Administrator would protect the public interest, and did not intend that individual tenants should assert the public interest in effective stabilization in the protest and review proceedings established by the Act. The Administrator's interpretation of the Act, as embodied in Section 1300.216 of Revised Procedural Regulation No. 3, restricting the protest procedure to landlords, is reasonable, and is fully authorized by the Act. When the Congress has desired to enlarge the class of persons entitled to judicial review, it has used less restrictive terms than

"subject to." In such instances it has used terms of a broader connotation, such as "person aggrieved," "person adversely affected," and similar expressions. And in both the present and previous rent-control statutes for the District of Columbia the Congress used express language in giving tenants the right to petition and review. Furthermore, the Congress has in several instances rejected proposals to amend the Price Control Act by enlarging the class of persons entitled to protest. By such action, the Congress has indicated that, under the system established by the Act, the interests of consumers and tenants were to be safeguarded by the Price Administrator; *a fortiori,* it has supported the Administrator's interpretation that such interests may not be asserted in the review proceedings established by the Act.

II

The fact that petitioners were permitted to participate in the proceedings before the area rent director did not confer upon them the right to protest under Section 203 (a) of the Act. In accordance with Section 1300.206 of Revised Procedural Regulation No. 3, the area rent director is authorized to make investigations and secure information from all sources. The status of petitioners before the area director was, therefore, that of witnesses.

I

NEITHER THE ACT NOR THE RENT REGULATION CONFERS UPON TENANTS PRIVATE RIGHTS TO POSSESSION OF HOUSING ACCOMMODATIONS WHICH THEY MAY ASSERT IN THE ADMINISTRATIVE AND JUDICIAL REVIEW PROCEEDINGS PROVIDED FOR BY THE ACT.

A. The Act confers no private rights upon tenants to possession of housing accommodations.

The primary purpose of the Emergency Price Control Act of 1942, as amended, is to stabilize prices and rents. Nowhere, except in Section 4 (b), does the Act expressly limit any rights which landlords may otherwise have to evict tenants. Section 4 (b) limits the landlord's right to have a tenant evicted only when he seeks to do so because the tenant "has taken, or proposes to take, action authorized or required by this Act or any regulation, order, or requirement thereunder", and is plainly inapplicable here.[1] The Congress, however, recognized that unrestrained evictions of tenants generally might defeat the basic purpose of Section 2 (b) of the Act, which was to stabilize rents. Accordingly, the Administrator was given the authority by Section 2 (d) of the Act to regulate or prohibit

[1] That provision was intended to protect tenants who might complain to the Office of Price Administration that landlords were charging unlawful rents, or who might bring actions against landlords under Section 205 (e) of the Act for treble damages. See H. Rept. No. 1409, 77th Cong., 1st Sess., p. 8; S. Rept. No. 931, 77th Cong., 2d Sess., p. 20; Hearings before House Committee on Banking and Currency on H. R. 5479 (superseded by H. R. 5990), 77th Cong., 1st Sess., p. 961.

> * * * speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in * * * rent increases * * * inconsistent with the purposes of this Act.

Thus, the Price Administrator was given the power to regulate or prohibit evictions, but only when in his judgment it would be necessary to do so in order to stabilize rents. Hence, the Congressional purpose in authorizing the Price Administrator to regulate or prohibit evictions by landlords, was not to confer upon individual tenants private rights to possession which they did not possess before, but to aid the Administrator in maintaining effective rent regulation by preventing evasions of the Act.[2] *Taylor* v. *Brown*, 137 F. 2d 654, 662 (ECA), certiorari denied, 320 U. S. 787. Cf. *Porter* v. *Lee*, Nos. 1116–1117, October Term, 1945, decided May 27, 1946.

B. The restriction imposed by Section 6 of the Rent Regulation upon the rights of landlords to evict tenants does not create private rights to possession in individual tenants

Pursuant to Section 2 (d) of the Act, the Administrator has included in the Rent Regulation

[2] That this is the case is further indicated by Section 4 (d) which provides that "Nothing in this Act shall be construed to require any person * * * to offer any accommodations for rent."

a provision which prohibits landlords generally from instituting eviction proceedings at local law against tenants who pay their rent. This general restriction is conditional, not absolute.[3] The conditions under which it will be lifted are set forth in Section 6 of the Rent Regulation, *infra*, pp. 43–50. Thus, Section 6 (a) authorizes the landlord to pursue his remedies at local law if the tenant refuses to renew a lease, unreasonably refuses access to the landlord, violates an obligation of his tenancy, or commits a nuisance on the premises. The restriction is likewise lifted if sub-tenants are in possession at the expiration of the tenant's lease, or if the landlord owned the house on the effective date of the regulation and has an immediate and compelling necessity to recover possession for his own occupancy. In addition, Section 6 (b) (1) authorizes the landlord to petition the Administration for a certificate permitting him to institute proceedings at local law to evict the tenant on grounds other than those specified in Section 6 (a). Specific provision is made, in Section 6 (b) (2), for the issuance of certificates, under certain conditions, to purchasers of housing accommodations which they seek to occupy and, in Section 6 (b) (3), for the issuance of certificates, under certain conditions,

[3] This is not to say that the Administrator may not have the authority, if necessary to effectuate the purposes of the Act, to prohibit all evictions. Cf. *Gemsco, Inc.* v. *Walling*, 324 U. S. 244.

to purchasers of stock in cooperative organizations owning multiple dwelling structures who seek to occupy apartments in the structure by reason of their stock ownership.[4] Applicants for certificates under Section 6 (b) (3) must also satisfy the conditions of Section 6 (b) (2).[5] It is further provided in Section 6 (e) that the enumeration in Section 6 of the conditions under which a landlord may resort to local law to evict a tenant shall not be construed "to authorize the removal of a tenant unless such removal is authorized under the local law."

It is true, of course, that Section 6 of the Rent Regulation affords tenants greater protection in their continued possession of housing accommodations than they would have in its absence. Cf. *Brand* v. *Chicago Housing Authority*, 120 F. 2d 786 (C. C. A. 7). But the basic question in this case is whether Section 6 confers upon ten-

[4] Section 6 (b) (3) was added by Amendment 17, issued February 16, 1945 (10 F. R. 1974), to prevent the exaction of payments from tenants equivalent to rent increases, which was occurring because of the sale of proprietary leases to apartments in multiple dwelling units as part of so-called "cooperative" ventures. See Statement of Reasons accompanying Amendment No. 17, *infra*, pp. 51-56. (Pike & Fischer, OPA Service, pp. 200:393—T, U, and V.)

[5] It was under Sections 6 (b) (2) and (3) that the Administrator issued his orders granting certificates to the purchasers of the stock in the apartment building in which petitioners are living. Orders granting or denying such certificates are orders under Section 2 of the Act which may be attacked only in accordance with the provisions of Sections 203 and 204 of the Act.

ants private rights to possession of housing accommodations of such nature as may, under Sections 203 and 204 of the Act, be asserted by protest to the Administrator and complaint to the Emergency Court of Appeals. It is clear that if the Administrator refuses to issue a certificate under Section 6 (b) to a landlord, or if the landlord without applying for a certificate resorts to local law to evict the tenant on grounds other than those specified in Section 6 (a), the tenant may assert lack of compliance with Section 6 as a bar to the landlord's obtaining a judgment of eviction, and the Administrator, in such case, may resort to the federal courts to enjoin the landlord from prosecuting the eviction proceedings against the tenant or even to restrain execution of a local court's judgment of eviction. *Porter* v. *Lee,* Nos. 1116–1117, October Term, 1945, decided May 27, 1946; *Porter* v. *Dicken,* No. 1118, October Term, 1945, decided May 27, 1946. Is this protection, which is conditioned upon the fact that the landlord has not satisfied the requirements of Section 6, the only protection which the tenant possesses? Or does the very existence of Section 6 confer private rights upon tenants which give them standing to protest and to seek judicial review of the provisions of Section 6 or the issuance of eviction certificates thereunder, on the ground, for example, that these provisions do not impose sufficiently stringent restrictions upon landlords,

or that the landlord did not make out a proper case for the issuance of an eviction certificate?

After careful consideration, the Administrator concluded that Section 6 of the Rent Regulation could not be construed as conferring any such right upon tenants. In our view, when a tenant at local law urges lack of compliance with Section 6 as barring the landlord from obtaining a judgment of eviction, he is not asserting a private right vested in him by the Act or the Rent Regulation, but is asserting that the federal law, which is made the supreme law of the land by Article VI of the United States Constitution, has not been obeyed by the landlord, and that in the public interest the landlord should not be permitted to gain any advantage from his violation of the law. In other words, Section 2 (d) of the Act and Section 6 of the Rent Regulation issued thereunder are not intended to protect individual tenants by creating private rights in them which they did not have before, but to protect the public interest against action by landlords tending to undermine the rent stabilization program.

It is submitted, therefore, that the interest petitioners are seeking to assert in this proceeding is basically similar to the nonlitigable interest of tenants generally that maximum rents shall not be too high or the interest which consumers generally had that the Administrator should not fix maximum prices that were

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too high. It is the interest of the general public in an effective stabilization program.[6]

There would certainly seem to be as much reason for holding that a tenant may protest and secure judicial review of a regulation fixing the general level of maximum rents or of an order of the Administrator granting a rent adjustment to his landlord as for holding that a tenant may protest the issuance of an eviction certificate under Section 6 of the Rent Regulation. A tenant's right to challenge the Administrator's exercise of authority to restrict evictions, which is lodged in the Administrator only to assure maintenance of the established maximum rents, can be no greater than his right to challenge the established maximum rents themselves. Nor is there any basis for distinguishing between the tenant's interest in not being evicted and his interest in a maximum rent that is not too high. A higher rent which a tenant is unable to pay may result as certainly in his dispossession as the issuance of an eviction certificate which still permits him to exercise any rights he may have at local law to resist eviction.

[6] If respondent's view in this regard is correct, petitioners had no "property" of which they could be deprived by the Administrator, and refusing petitioners the right to protest and secure judicial review in this case does not violate the Fifth Amendment. On the other hand, if petitioners do have a private right to possession of which they have been deprived by the Administrator, respondent would agree that the phrase "subject to" in Section 203 (a) of the Act should be construed to give petitioners the right to protest and to judicial review in this case.

That the tenants in this case are seeking to assert the public interest, and not private rights, is further indicated by the fact that evidence of the personal situation of tenants is not relevant to an administrative determination to grant or deny eviction certificates under Section 6 (b) of the Rent Regulation. The only question under Section 6 (b) is whether the eviction in the particular case would be in aid of an attempt to circumvent rent control, and not the degree of hardship that would be inflicted upon tenants if they should be evicted.

C. Sections 203 and 204 of the Act afford administrative and judicial review only to sellers of commodities, buyers in the course of trade or business, and landlords

Section 203 (a) of the Emergency Price Control Act of 1942, as amended, provides that only a person "subject to" a provision of a regulation or order issued under Section 2 of the Act may file a protest against it. Section 204 (a) of the Act provides that any person who is aggrieved by the denial of his protest may file a complaint with the Emergency Court of Appeals asking that the regulation or order protested be enjoined or set aside. Only a person, therefore, who has standing to protest may, in the event his protest is denied, file a complaint in the Emergency Court. *Illinois Packing Co.* v. *Bowles,* 147 F. 2d 554 (ECA).

We submit that the use by the Congress of the restrictive phrase "subject to" in Section 203 (a) of the Act, together with the legislative history of that section, leaves no doubt that the Congress did not intend that consumers and tenants should have the right to assert the public interest in effective stabilization by attacking the validity of regulations and orders in the administrative and judicial proceedings provided by the Act. The Congress vested in the Price Administrator the guardianship of the public interest. Cf. *Federal Trade Commission* v. *Klesner,* 280 U. S. 19; *Amalgamated Utility Workers (C. I. O.)* v. *Consolidated Edison Co. of New York,* 309 U. S. 261. His efforts were to be judged by the results achieved. If he should fail, the public could look for relief in forums other than the courts of law. Administrative and judicial review was afforded only to sellers of commodities, buyers in the course of trade or business, and landlords. Accordingly, in Section 1300.216 of Revised Procedural Regulation No. 3,[7] the Administrator has interpreted the phrase "subject to" in Section 203 (a) of the Act as permitting only landlords, and never tenants, to file protests against rent regulations or orders.

The phrase "subject to" in Section 203 (a) of the Act has a more restrictive connotation than

[7] See the provisions of Section 24 of Revised Procedural Regulation No. 1, *infra*, p. 39, and Section 1300.216 of Revised Procedural Regulation No. 3, *infra*, pp. 40–41.

such phrases as "person affected," "person aggrieved," "person adversely affected," or similar phrases which Congress has used in various other statutes, when it has desired to give a broader class of persons rights to administrative and judicial review than the class which, in our opinion, was given rights to such review under Sections 203 and 204 of the Act.[8] At one stage of its history, the price control bill provided a right to protest and judicial review to "any person who is aggrieved by any order or regulation of the Administrator," but this provision was stricken.[9] Those opposing the bill containing

[8] For cases holding that particular classes of persons are afforded administrative and judicial review, see *American Power & Light Co.* v. *Securities & Exchange Commission*, 325 U. S. 385; *United States* v. *Public Utilities Commission*, 151 F. 2d 609, 613 (cases, and examples of statutes collected in footnote 13 of opinion); *Federal Communications Commission* v. *Sanders Bros. Radio Station*, 309 U. S. 470; *Columbia Broadcasting System* v. *United States*, 316 U. S. 407; *Federal Communications Commission* v. *National Broadcasting Co.*, 319 U. S. 239; and *Stark* v. *Wickard*, 321 U. S. 288. For cases holding that particular persons had no right to review, see *Alabama Power Co.* v. *Ickes*, 302 U. S. 464; *Tennessee Electric Power Co.* v. *Tennessee Valley Authority*, 306 U. S. 118; and *Perkins* v. *Lukens Steel Co.*, 310 U. S. 113. These decisions rest upon determinations as to whether the particular statutory language and the pattern of the statute as a whole evidence an intention on the part of the Congress to provide judicial review for the classes of persons there involved.

[9] Section 203 (a) of the bill as originally introduced contained the words "subject to." H. R. 5990 as reported in the House, November 3, 1941; H. Rep. No. 1409, 77th Cong., 1st Sess., p. 10. However, an amendment, recommended by the

this provision recognized that it would have given buyers (or tenants) a right to appeal for a lower price (or rent).[10]

House Banking Committee, and providing for a complete new plan of administration, including a Board of Administrative Review, was introduced on the floor; and new sections numbered 201 and 204 were added (87 Cong. Rec. 9225–9226; substitute amendment offered by Representative Wolcott). The new Section 204 provided that "any person who is aggrieved by any order or regulation of the Administrator" might appeal such order or regulation to the Board of Administrative Review. This amendment, in substance, together with further provisions permitting any person aggrieved by the determination of the Board of Review to file a petition to review such determination in a circuit court of appeals was passed by the House on November 28, 1941 (87 Cong. Rec. 9247). When the bill reached the Senate all of the language of the bill after the enacting clause was stricken and the language of the Senate Banking Committee bill was substituted therefor. (88 Cong. Rec. 94–98.) The bill containing the substituted language passed by the Senate reinstated the original Section 203 (a) (and with it the phrase "subject to"), and this language was retained in the final Act.

[10] Thus, Mr. David Ginsburg, then General Counsel of the Office of Price Administration and Civilian Supply, informed the Senate Committee:

"The House has suggested a third kind of provision. The House, first, has the prices fixed by the Administrator. Then any person aggrieved or substantially affected by the order of the Administrator may take an appeal to a five-man board * * *

* * * * *

"Under the House bill any person aggrieved, as Mr. Henderson pointed out, either the buyer or the seller, may appeal to this board. In the considered judgment of our staff, trading in hundreds of commodities would stop, actually stop, because of the possibility that sellers might get a higher price. Remember also that the buyer may appeal for a lower

In repudiating the bill originally passed by the House, the Congress also eliminated another of its sections, 2 (j), which specifically permitted the tenant to petition for adjustment of the rent ceiling on the ground that it was unduly high.[11]

The Senate Report thus explains the provisions of Section 203 (a) which appeared in the final Act:

> Section 203 (a) is designed to provide the advantages of a hearing, in a manner consistent with the need for expeditious determinations, *to all persons who are required to obey the provisions of regulations or orders under section 2. It provides that any person subject to* any of the provisions of any regulation or order issued under section 2 of the bill, may * * * file a protest * * *. Other interested parties may submit statements in support of any such provision * * *. [Italics supplied] (Sen. Rep. No. 931, 77th Cong., 2d Sess., p. 22.)[12]

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price." (Hearings before Senate Committee on Banking and Currency, 77th Cong., 1st sess., on H. R. 5990, p. 145.)

[11] Representative Dirksen, who introduced this section, stated that he was following the precedent of the pending District of Columbia Emergency Rent Bill, which allowed applications for review by either the landlord or the tenant (87 Cong. Rec. 9211).

[12] Petitioners lay stress upon the statement of Congressman Steagall, quoted at page 21 of petitioners' brief, that the provision of the House Bill "gave anybody dissatisfied with any order, ceiling, or regulation of the Administrator the right to appear and protest the action of the Administrator"

Section 4 (a) of the Act, in effect, restricts the class of persons required to obey the provisions of a regulation or order under Section 2 to sellers of commodities, buyers of commodities in the course of trade or business, and landlords.[13] It would seem, therefore, that only these classes of persons are "subject to" the provisions of a rent or price regulation or order.[14] The "other interested parties" given a right under Section 203 (a) to "submit statements in support of any such provision" must refer to consumers—either buyers of commodities for ultimate use or tenants.

The use of the restrictive phrase "subject to" in Section 203 (a) of the Act becomes even more significant when it is recalled that when, as in

(88 Cong. Rec. 664). The general remarks of Mr. Steagall do not lend any support to petitioners' contention in view of the clear and specific wording of the Act, the Committee Reports, and the entire legislative history. Obviously, Mr. Steagall was speaking in general terms rather than using terms of art. Consequently, the phrase used by him should not be read literally.

[13] Congress decided that compliance with maximum price and rent regulations would be furthered more by giving consumers a right to sue sellers of commodities or landlords for three times the amount of any overcharge than by making it unlawful for consumers to pay more than the maximum price or rent. See Section 205 (e). It would have been impossible to make it unlawful for a consumer to overpay and yet give him a right, in spite of his unlawful action, to bring a treble damage suit against the seller or landlord. Hearings before Senate Committee on Banking and Currency on H. R. 5990, 77th Cong., 1st sess., p. 141.

[14] A buyer in the course of trade or business is "subject to" a price regulation or order only to the extent that he may protest that such regulation or order fixes a maximum price

the statutes relating to the District of Columbia, the Congress wished to give tenants a right to judicial review of the decisions of a Rent Administrator, it did so in express language.[15]

Moreover, the Congress appears to have ratified and approved the Administrator's construction of the phrase "subject to" in Section 203 (a). When the renewal of the Act was under consideration in 1944 and 1945, proposals were made to broaden the class of persons who might protest.[16] Among the proposals was one to extend the class to any "person aggrieved"[17] and another to require that "no protest shall be dismissed because of the absence of direct damage" to the person filing the protest.[18] All of these proposals were rejected.

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that is too low. He may not protest that such maximum price is too high. *Buka Coal Co.* v. *Brown*, 133 F. 2d 949 (ECA).

[15] See The District of Columbia Emergency Rent Act, Sections 4 (a), 4 (c), 4 (e), 4f, 8, and 9 (55 Stat. 788), which was considered by the Congress at the same time as the Emergency Price Control Act, and was passed several months prior to the passage of the latter Act. See also the District of Columbia Rent Act, Sections 106 and 108, enacted during World War I (41 Stat. 297).

[16] Hearings before the Senate Committee on Banking and Currency, 78th Cong., 2d Sess., on S. 1764, pp. 474, 1304, 1325, 1330, 1367, 1474. Hearings before the House Committee on Banking and Currency, 78th Cong., 2d Sess. on H. R. 4376, pp. 449, 495, 568. Hearings before Senate Committee on Banking and Currency, 79th Cong., 1st Sess. on S. J. Res. 30, p. 452.

[17] Hearings before the Senate Committee on Banking and Currency, 78th Cong., 2d Sess. on S. 1764, p. 1330.

[18] Id. at p. 1366–7.

Furthermore, it is the considered opinion of the Administrator that the construction of Section 203 which he has adopted will best protect the public interest in effective rent stabilization. It is the function of the courts, of course, to assure that the Administrator follows the standards laid down by Congress to guide him in the performance of his duties. *Yakus* v. *United States*, 321 U. S. 414; *Bowles* v. *Willingham*, 321 U. S. 503. Even in time of war, the difficult task of preventing inflation, so necessary to the successful prosecution of the war, was not entrusted to the Executive Branch of the Government free from such judicial scrutiny. These standards basically, prescribe minimum levels below which the Administrator may not go in establishing maximum prices and rents. *Gillespie-Rogers-Pyatt Co., Inc.* v. *Bowles*, 144 F. 2d 361 (E. C. A.); *315 West 97th Street Realty Co., Inc.* v. *Porter*, 156 F. 2d 982 (E. C. A.), pending on petition for certiorari, No. 526. They place a limit upon the authority of the Administrator to restrict the exercise, by the business community, of rights which it possesses in peacetime. It is the business community (sellers of commodities, buyers of commodities in the course of trade or business, and landlords) whose actions are intended to be limited by the Act and who are therefore required, under the threat of criminal and civil penalties, to obey the regulations and orders of the Price Administrator. It is the purpose, therefore, of

Sections 203 and 204 of the Act to give to those who comprise the business community the right of judicial review so that they will be assured that the Administrator conforms to the limitations placed upon his authority. Although the basic purpose of the Administrator in fixing maximum prices and rents is to protect the public interest, so long as he does not fix them so low as to contravene the requirements of law he has a very broad discretion under the Act in his choice of the levels of maximum prices and rents that he may establish. While judicial review of the Administrator's exercise of this broad discretion might have benefited particular tenants or consumers, allowing all such persons the right to protest and seek judicial review could have imposed such a burden of work upon the Administrator as to weaken his efforts to achieve his primary objectives and thereby adversely affect the interests of the consuming public in general.[19]

[19] An idea of the multitude of work handled by the Administrator and of the additional burden that might be imposed upon him by granting tenants the right to administrative and judicial review may be gleaned from the following figures: As of March 31, 1946, well over 19,000,000 housing accommodations in 497 defense-rental areas were under rent control. As of this date, 1,340,955 landlords' petitions for rent increases had been disposed of. During the quarter ending March 31, 1946, there were almost 130,000 cases in which the rent directors acted on their own initiative to decrease rents. In the month of March 1946 alone, area rent offices received over 60,000 landlords' petitions for certificates of eviction. At this rate, on an annual basis, one out of every 20 tenants, or a total of about 800,000 families in housing under rent

Balancing this consideration against the good that might have been achieved by subjecting the Administrator to such judicial review, it is readily understandable why the Congress did not deem it advisable to give members of the consuming public such a right.[20] It was intended, instead, that the Administrator should be answerable to the Congress, the President, and the bar of public opinion.

The views which we advance herein are not inconsistent with the decisions of the Emergency Court of Appeals in *Illinois Packing Company* v. *Bowles,* 147 F. 2d 554, and *Illinois Packing Company* v. *Snyder,* 151 F. 2d 337; nor are they inconsistent with Section 24 of Revised Procedural Regulation No. 1, which provides that producers of agricultural commodities may assert by protest any right created by Section 3 (c) of the Emergency Price Control Act of 1942, as amended, for the benefit of such producers. It

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control could be affected by such petitions. During the past six months, almost 90% of the petitions for certificates of eviction have been granted by area rent offices. (Seventeenth Quarterly Report of the Office of Price Administration, March 31, 1946, p. 79 *et seq.*, H. Doc. No. 711, 79th Cong., 2d sess.)

[20] Consumers and tenants are, of course, free to pay less than the maximum prices and rents established by the Administrator. Similarly, the issuance of an eviction certificate to a landlord is not an order to the tenant to vacate. It merely permits the landlord to proceed to exercise whatever rights he may have at local law to evict the tenant, and is, therefore, no more than a determination by the Administrator that the eviction of the particular tenant from the specific property will not adversely affect rent stabilization.

should be noted that the *Illinois Packing Company* cases and Section 24 of Revised Procedural Regulation No. 1 involved sellers of commodities under price control.

In the *Illinois Packing Company* cases, the Emergency Court of Appeals held that a subsidy regulation issued by the Defense Supplies Corporation was a regulation under Section 2 of the Emergency Price Control Act; that a subsidy applicant could file a protest with the Defense Supplies Corporation and complain to the Emergency Court that he came within the class of persons for whom the subsidy was intended; and that to deprive him of the subsidy would be arbitrary and capricious. The Emergency Court recognized that the language of Section 203 (a) of the Act did not strictly fit that case, since the "Administrator" is the only person referred to therein as being authorized to entertain and dispose of protests. *Illinois Packing Company* v. *Bowles, supra.* But the court in that case held that the protest and review procedures in Sections 203 and 204 of the Act must follow the regulatory power, and that the phrase "subject to" in Section 203 (a) should, therefore, be read in that light. In spite of the fact that the subsidy regulation did not prohibit or require action of anyone, subsidy applicants, nevertheless, had to be given a right to protest if there was to be any judicial review of the subsidy regulations issued by the Defense Supplies Corporation. Since sub-

sidies constituted a method by which the Administrator could have satisfied the minimum requirements of the Act,[n] there was as much reason for subjecting a subsidy regulation issued under Section 2 of the Act to judicial review as there was for subjecting the basic maximum price regulation itself to such review. As the Emergency Court of Appeals pointed out in *Illinois Packing Company* v. *Snyder, supra* (151 F. 2d at 388–289),

> * * * it is inadmissible to put upon the phrase "any person subject to any provision" of a regulation under section 2 an interpretation which would make it impossible for anyone to invoke our jurisdiction in this type of case, especially one who, like complainant, is most immediately and directly prejudiced by the challenged provision of the subsidy regulation.

It is submitted that the *Illinois Packing Company* cases deal with a very special situation and are not authority for petitioners' view that a tenant should be permitted to protest the issuance by the Administrator of a certificate authorizing the landlord to pursue whatever rights he may have at local law to evict the tenant. The tenant's interest can be likened to that of a member of the public seeking to protest that a subsidy regulation is either too generous to the industry receiving the

[n] Subsidies were included with other income to sellers in determining whether a maximum price regulation was generally fair and equitable. Cf. *Heinz* v. *Bowles*, 150 F. 2d 546 (ECA), certiorari denied, 326 U. S. 719.

subsidy or that more subsidies should be paid in order to maintain a lower maximum price structure. Cf. *Massachusetts* v. *Mellon*, 262 U. S. 447.

Nor is Section 24 of Revised Procedural Regulation No. 1 authority for the position taken by the petitioners. Section 3 (c) of the Emergency Price Control Act, as amended, provides that no maximum price shall be established by the Price Administrator for commodities processed from agricultural commodities below a price which reflects certain minimum prices to the producers of such agricultural commodities. This limitation upon the Price Administrator's authority was imposed for the benefit of agricultural producers as sellers of their commodities. As in the *Illinois Packing Company* cases, if there was to be any judicial review to determine whether the Administrator had complied with the provisions of Section 3 (c), agricultural producers had to be permitted to protest regulations fixing maximum prices for commodities processed from agricultural commodities, in spite of the fact that such regulations did not prohibit or require any action on the part of such producers. Cf. *Stark* v. *Wickard, supra.* Certainly processors had no interest in protesting, and indeed had no right to protest, such regulations on the ground that the Administrator had not respected the rights specifically conferred upon agricultural producers by Section 3 (c) of the Act. *Allied Foods* v. *Bowles*, 151 F. 2d 449 (ECA).

Indeed, the *Illinois Packing Company* cases and Section 24 of Revised Procedural Regulation No. 1 further illustrate our view that the system of administrative and judicial review established by Sections 203 and 204 of the Act was intended by the Congress to be for the benefit of members of the business community upon whom the restrictions of the Act were imposed. Thus, they are not inconsistent with our view that the Price Administrator was regarded as the protector of the public interest, and as such subject not to judicial review, but only to the other restraints inherent in our form of government.

I

THE FACT THAT PETITIONERS WERE PERMITTED TO PARTICIPATE IN THE PROCEEDINGS BEFORE THE AREA RENT DIRECTOR DID NOT CONFER UPON THEM THE RIGHT TO PROTEST

As required by Revised Procedural Regulation No. 3, the purchasers of the proprietary leases to the housing accommodations occupied by petitioners filed with the area rent director their applications for certificates permitting them to pursue whatever remedies they had at local law to evict the petitioners. Section 1300.206 of the Procedural Regulation provides that in such case

> * * * the rent director may make such investigation of the facts involved in the petition or application, hold such conferences, and require the filing of such re-

ports, evidence in affidavit form or other material relevant to the proceeding, as he may deem necessary or appropriate for the proper disposition of the petition or application.

To aid the director in disposing of the applications, the petitioners were informed of their pendency and were advised that they might submit information concerning the applications.[22] Subsequently the area rent director, finding that a fair determination of the landlords' applications in this case would be expedited by the holding of an oral hearing, scheduled such a hearing, and petitioners were invited to present testimony.

Petitioners now argue that because they were given the right to present testimony in the hearing before the area rent director, they were made "parties" to the proceeding and thereby gained the right to protest the final order of the Ad-

[22] The general practice of the area rent offices is to inform tenants of all proceedings that might affect the maximum rents for the housing accommodations they occupy. Tenants are permitted to submit any information they may have with respect thereto. In some cases, tenants are even permitted to file applictaions for decreases in maximum rents. See Section 5 (c) of the Rent Regulation for Housing, *infra*, p. 41, and Section 1300.205 of Revised Procedural Regulation No. 3, *infra*, p. 40. Action on such applications lies wholly within the discretion of the area rent director. There is no provision for review, at the request of the tenant, by the Regional Administrator of the action of the area rent director on such applications. The area rent director is of course subject to general supervision by his superiors.

ministrator. The fact that petitioners presented testimony before the area rent director did not make them parties to the proceeding. As the court below stated (R 67) in commenting upon this procedure:

> This was doubtless wise administrative procedure which enabled the Administrator to become fully informed with respect to all the facts which might have any bearing upon the questions raised by the petitions * * *.

Petitioners' status in the proceeding before the rent director was essentially that of witnesses aiding the area rent director in the carrying out of his duties, and not that of parties.[23] Indeed, it will be observed, that if tenants otherwise have no right to protest, a holding that they acquire such a right merely by being allowed to appear to present relevant evidence would confront the Administrator with the alternatives of denying himself access to an important source of information or assuming a new administrative burden of great magnitude, the adoption of either of which would be detrimental to the effective administration of the Act.

[23] The fact alone that a person may be a party to an administrative proceeding does not give him a right to maintain an independent suit to set aside the order involved. *Sprunt & Son* v. *United States*, 281 U. S. 249.

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the court below should be affirmed.

Respectfully submitted.

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APPENDIX

The pertinent provisions of the Emergency Price Control Act of 1942 (56 Stat. 23), as amended by the Stabilization Extension Act of 1944[1] (58 Stat. 632) (50 U. S. C. App., Supp. V, 901 et seq.), are as follows:

> SEC. 2. (b) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he shall issue a declaration setting forth the necessity for, and recommendations with reference to, the stabilization or reduction of rents for any defense-area housing accommodations within a particular defense-rental area. If within sixty days after the issuance of any such recommendations rents for any such accommodations within such defense-rental area have not in the judgment of the Administrator been stabilized or reduced by State or local regulation, or otherwise, in accordance with the recommendations, the Administrator may by regulation or order establish such maximum rent or maximum rents for such accommodations as in his judgment will be generally fair and equitable and will effectuate the purposes of this Act. So far as practicable, in establishing any maximum rent for any defense-area housing accommodations, the Administrator shall ascertain and give due consideration to the rents prevailing for such accom-

[1] Roman type is used to indicate text which has not been changed since original enactment or issuance and italics are used to indicate amendments.

modations, or comparable accommodations, on or about April 1, 1941 (or if, prior or subsequent to April 1, 1941, defense activities shall have resulted or threatened to result in increases in rents for housing accommodations in such area inconsistent with the purposes of this Act, then on or about a date (not earlier than April 1, 1940), which in the judgment of the Administrator, does not reflect such increases), and he shall make adjustments for such relevant factors as he may determine and deem to be of general applicability in respect of such accommodations, including increases or decreases in property taxes and other costs *within such defense-rental area.*[2] In designating defense-rental areas, in prescribing regulations and orders establishing maximum rents for such accommodations, and in selecting persons to administer such regulations and orders, the Administrator shall, to such extent as he determines to be practicable, consider any recommendations which may be made by State and local officials concerned with housing or rental conditions in any defense-rental area. * * *

(c) Any regulation or order under this section may be established in such form and manner, may contain such classifications and differentiations, and may provide for such adjustments and reasonable exceptions, as in the judgment of the Administrator are necessary or proper in order to effectuate the purposes of this Act. *Under regulations to be prescribed by the Administrator, he shall provide for the making of*

[2] Added by sec. 102 of the Stabilization Extension Act of 1944.

individual adjustments in those classes of cases where the rent on the maximum rent date for any housing accommodations is, due to peculiar circumstances, substantially higher or lower than the rents generally prevailing in the defense-rental area for comparable housing accommodations, and in those classes of cases where substantial hardship has resulted since the maximum rent date from a substantial and unavoidable increase in property taxes or operating costs.[3] Any regulation or order under this section which establishes a maximum price or maximum rent may provide for a maximum price or maximum rent below the price or prices prevailing for the commodity or commodities, or below the rent or rents prevailing for the defense-area housing accommodations, at the time of the issuance of such regulation or order.

(d) Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quality) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense-area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

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[3] Added by sec. 102 of the Stabilization Extension Act of 1944.

SEC. 3. (c) No maximum price shall be established or maintained for any commodity processed or manufactured in whole or substantial part from any agricultural commodity below a price which will reflect to producers of such agricultural commodity a price for such agricultural commodity equal to the highest price therefor specified in subsection (a).

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

(b) It shall be unlawful for any person to remove or attempt to remove from any defense-area housing accommodations the tenant or occupant thereof or to refuse to renew the lease or agreement for the use of such accommodations, because such tenant or occupant has taken, or proposes to take, action authorized or required by this Act or any regulation, order, or requirement thereunder.

* * * * *

(d) Nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent.

SEC. 203. (a) *At any time after the issuance of any regulation or order under section 2, or in the case of a price schedule, at any time after the effective date thereof specified in section 206,*[4] any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections.[5] Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing,[6] the Adminis-

[4] As amended by sec. 106 of the Stabilization Extension Act of 1944. Formerly read, in place of italicized language: "Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206."

[5] As amended by sec. 106 of the Stabilization Extension Act of 1944. At this point the following language was stricken out: "At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days."

[6] As amended by sec. 106 of the Stabilization Extension Act of 1944. At this point the following language was stricken out: "or ninety days after the issuance of the regulation or order (or in the case of a price schedule, ninety days after the effective date thereof specified in section 206) in respect of which the protest is filed, whichever occurs later."

trator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

SEC. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint or to remand the proceeding: *Provided*, That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. * * *

SEC. 205 (e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, *within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation.*[7] For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; *and the word*

[7] As amended by sec. 108 (b) of Stabilization Extension Act of 1944. Formerly read, in place of italicized language: "* * * bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court."

"overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. * * *

Revised Procedural Regulation No. 1 (7 F. R. 8961) (Procedure for the issuance, adjustment, amendment, protest and interpretation of maximum price regulations):

> SEC. 24. *Right to protest.* Any person subject to any provision of a maximum price regulation may file a protest against such provision in the manner set forth below. A person is, for the purposes of this revised procedural regulation, subject to a provision of a maximum price regulation only if such provision prohibits or requires action by him, *Provided, however,* That a producer of an agricultural commodity shall be considered to be subject to a maximum price regulation for the purpose of asserting any right created by section 3 (c) of the Emergency Price Control Act of 1942 or section 3 of the Stabilization Act of 1942 (Pub. Law 729, 77th Cong.), as amended by the Stabilization Extension Act of 1944 (Pub. Law 383, 78th Cong.), for the benefit of producers of such an agricultural commodity. Any protest filed by a person not subject to the provision protested, or otherwise not in accordance with this revised procedural regulation, may be dismissed by the Administrator.

Revised Procedural Regulation No. 3 (8 F. R. 526) (Procedure for adjustments, amendments, protests and interpretations under rent regulations):

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* Added by sec. 108 (b) of Stabilization Extension Act of 1944.

SUBPART A—LANDLORDS' PETITIONS AND TENANTS' APPLICATIONS

* * * * *

§ 1300.205 *Tenants' applications.* All tenants' applications provided for by any maximum rent regulation shall be filed with the rent director for the defense-rental area within which the housing accommodations involved are located. The application shall be filed on forms prescribed by the Administrator and pursuant to directions set forth on such forms. Action upon any tenant's application shall be within the discretion of the rent director and the procedure thereon shall be the same as in proceedings initiated by the rent director pursuant to provisions of a maximum rent regulation authorizing such action.

§ 1300.206 *Investigation of petitions and applications.* Upon the filing of a petition or application pursuant to the provisions of this regulation, the rent director may make such investigation of the facts involved in the petition or application, hold such conferences, and require the filing of such reports, evidence in affidavit form or other material relevant to the proceeding, as he may deem necessary or appropriate for the proper disposition of the petition or application.

* * * * *

SUBPART C—PROTESTS

General Provisions

§ 1300.216 *Right to protest.* Any landlord subject to any provision of a maximum rent regulation, or of an order issued under § 1300.210 of this regulation, or of an order entered under section 5 (d) of any maxi-

mum rent regulation, or of an order entered by the rent director under § 1300.207 of this regulation, may file a protest in the manner set forth below. A landlord is, for the purposes of this regulation, subject to a provision of a maximum rent regulation or of an order only if such provision prohibits or requires action by him. Any protest filed by a landlord not subject to the provision protested, or otherwise not in accordance with the requirements of this regulation, may be dismissed by the Administrator.

Rent Regulation for Housing for New York City Defense-Rental Area (8 F. R. 13914) as amended:

SEC. 5. *Adjustments and other determinations.* In the circumstances enumerated in this section, the Administrator may issue an order changing the maximum rents otherwise allowable or the minimum services required. * * *

* * * * * *

(c) *Grounds for decrease of maximum rent.* The Administrator at any time, on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable, only on the grounds that:

(1) *Rent higher than rents generally prevailing.* The maximum rent for housing accommodations under paragraph (c), (d), (e), or (g) of section 4 is higher than the rent generally prevailing in the defense-rental area for comparable housing accommodations on March 1, 1943.

(2) *Substantial deterioration.* There has been a substantial deterioration of the housing accommodations other than ordinary

wear and tear since the date or order determining its maximum rent.

(3) *Decrease in services, furniture, furnishings or equipment.* There has been a decrease in the minimum services, furniture, furnishings or equipment required by section 3 since the date or order determining the maximum rent.

(4) *Special relationship between landlord and tenant or peculiar circumstances.* The rent on the date determining the maximum rent was materially affected by the blood, personal, or other special relationship between the landlord and the tenant, or by peculiar circumstances, and as a result was substantially higher than the rent generally prevailing in the defense-rental area for comparable housing accommodations on March 1, 1943.

(5) *Varying rents.* The rent on the date determining the maximum rent was established by a lease or other rental agreement which provided for a lower rent at other periods during the term of such lease or agreement: *Provided,* That this subparagraph shall not apply to cases covered by paragraph (c) (8) of this section.

(6) *Seasonal rent.* The rent on the date determining the maximum rent was substantially higher than at other times of year by reason of seasonal demand, or seasonal variations in the rent, for such housing accommodations. In such cases the Administrator's order may if he deems it advisable provide for different maximum rents for different periods of the calendar year.

(7) *Substantial decrease in occupancy.* There has been a substantial decrease in the number of subtenants or other occu-

pants since an order under paragraph (a) (8) of this section.

(8) *Rent concession.* The rent on the date determining the maximum rent was established by a lease or other rental agreement for a period of occupancy of one or more years, which provided for a rent concession during such period of occupancy in the form of either a rent-free period or an abatement of rent.

(9) *Modification or elimination of necessity for increase under section 5 (a) (12).* There has been a modification or elimination of the necessity for the increase in the maximum rent granted under paragraph (a) (12) of this section, since the order issued under that paragraph.

* * * * *

SEC. 6. *Removal of tenant—(a) Restrictions on removal of tenant.* So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, unless:

(1) *Tenant's refusal to renew lease.* The tenant, who had a written lease or other written rental agreement, has refused upon demand of the landlord to execute a written

extension or renewal thereof for a further term of like duration, or if the lease was for a term of less than one year but more than three months and was nonseasonal in character, for a term of not more than one year, for a rent not in excess of the maximum rent, but otherwise on the same terms and conditions as the previous lease or agreement, except insofar as such terms and conditions are inconsistent with this regulation; or

(2) *Tenant's refusal of access to landlord.* The tenant has unreasonably refused the landlord access to the housing accommodations for the purpose of inspection or of showing the accommodations to a prospective purchaser, mortgagee, or prospective mortgagee, or other person having a legitimate interest therein: *Provided, however,* That such refusal shall not be ground for removal or eviction if such inspection or showing of the accommodations is contrary to the provisions of the tenant's lease or other rental agreement; or

(3) *Violating obligation of tenancy or committing nuisance.* The tenant (i) has violated a substantial obligation of his tenancy, other than an obligation to pay rent, and has continued, or failed to cure, such violation after written notice by the landlord that the violation cease, or (ii) is committing or permitting a nuisance or is using or permitting a use of the housing accommodations for an immoral or illegal purpose; or

(4) *Subtenants on expiration of tenant's lease.* The tenant's lease or other rental agreement has expired or otherwise terminated, and at the time of termination the occupants of the housing accommodations are subtenants or other persons

who occupied under a rental agreement with the tenant, and no part of the accommodation is used by the tenant as his own dwelling; or

(5) [Revoked]

(6) *Occupancy by landlord.* The landlord owned, or acquired an enforceable right to buy or the right to possession of, the housing accommodations prior to November 1, 1943, and has an immediate compelling necessity to recover possession of such accommodations for use and occupancy as a dwelling for himself, or has served during the period of the war emergency in the armed forces of the United States and in good faith seeks possession for his own occupancy. If a tenant has been removed or evicted under this paragraph (a) (6) from housing accommodations, the landlord shall file a written report on a form provided therefor before renting the accommodations or any part thereof during a period of six months after such removal or eviction.

(b) *Administrator's certificate*—(1) *Removals not inconsistent with act or regulation.* No tenant shall be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord may pursue his remedies in accordance with the requirements of the local law. The Administrator shall so certify if the landlord establishes that removals or evictions of the character proposed are not inconsistent with the purposes of the act or this regulation and would not be likely to result in the circumvention or evasion thereof. The certificate shall authorize the pursuit of local remedies at the expiration of six months after the date of filing of the

petition unless the Area Rent Director has determined that a three months' period is adequate for the purposes of the act in this area in issuing certificates under section 6 (b) (2), in which event the applicable period shall be three months. Within the discretion of the Area Rent Director the certificate may authorize the pursuit of local remedies for the removal or eviction of the tenant at a time less than six or three months, as the case may be, after the date of the filing of the petition if the petitioner establishes that unusual hardship would otherwise result, or that a lesser period in the particular case is consistent with the purposes of the regulation and the act.

(2) *Occupancy by purchaser.* A certificate shall be issued authorizing the pursuit of local remedies to remove or evict a tenant of the vendor, for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after November 1, 1943, only as provided in this paragraph (b) (2).

(i) Where the Administrator finds that the payment or payments of principal made by the purchaser aggregate twenty percent or more of the purchase-price, he shall, on petition of either the vendor or purchaser, issue a certificate authorizing the vendor or purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law. Except as herein provided and unless the Area Rent Director shall determine that a three months' period is adequate for the purposes of the act in this defense-rental area the certificate shall authorize the pursuit of local remedies at the expiration of

six months after the date of filing of the petition * * *.

The payment or payments of principal may be made by the purchaser conditionally or in escrow to the end that they shall be returned to the purchaser in the event the Administrator denies a petition for a certificate.

Any payments of principal made from funds borrowed for the purpose of making such payments, shall be excluded in determining whether twenty percent of the purchase price has been paid, unless the Administrator finds that the inclusion of such payments is consistent with the purposes of this paragraph (b) (2) and would not be likely to result in the circumvention or evasion thereof.

Where property other than the housing accommodations which are the subject of the purchase is mortgaged or pledged to the vendor to secure any unpaid balance of the purchase price, the payment requirement shall be deemed satisfied if the value of such security, plus any payments of principal made from funds not borrowed for the purpose of making such principal payments, equal twenty percent or more of the purchase price.

(ii) Where the Administrator finds (a) that equivalent accommodations are available for rent into which the tenant can move without substantial hardship or loss, or (b) that the vendor has or had a substantial necessity requiring the sale and that a reasonable sale or disposition of the accommodations could not be made without the removal or eviction of the tenant, or (c) that other special hardship would result, a certificate may be issued although less than twenty percent of the purchase

price has been paid and may authorize the vendor or purchaser to pursue his remedies for removal or eviction of the tenant at the expiration of a period shorter than the maximum waiting period which would otherwise be imposed under this section.

(iii) The payment of twenty percent or more of the purchase price shall not be a condition to the issuance of a certificate under this paragraph (b) (2) where the purchaser has obtained a loan to be used in purchasing the housing accommodations which is guaranteed in whole or in part by the Administrator of Veterans' Affairs pursuant to the provisions of Title III of the Servicemen's Readjustment Act of 1944.

(3) *Occupancy by purchaser of stock in a cooperative.*

(i) This paragraph (b) (3) applies to the issuance of a certificate for occupancy of housing accommodations in a structure or premises owned or leased by a cooperative corporation or association (hereinafter called "cooperative") by a purchaser of stock or other evidence of interest (hereinafter called "stock") in such cooperative who is entitled by reason of ownership of such stock to possession of such housing accommodations by virtue of a proprietary lease or otherwise. It applies only to the issuance of a certificate authorizing the pursuit of local remedies to remove or evict one who was a tenant of the housing accomodations at the time of such purchase.

(ii) Where the cooperative was organized as such or acquired its title or leasehold interest in the structure or premises on or after February 17, 1945, or the effective date of regulation, whichever is the later, or where the purchased stock originally was

issued on or after that date, no certificate shall be issued, unless on such date the cooperative was in the process of organization and the Administrator finds that substantial hardship would result from the failure to issue a certificate, or unless, at the time of issuance of the certificate, stock in the cooperative has been purchased by persons who are then tenants of at least 80% of the dwelling units in the structure or premises and are entitled by reason of stock ownership to proprietary leases of dwelling units in the structure or premises.

(iii) Where the cooperative was organized and acquired its title or leasehold interest in the structure or premises before February 17, 1945, or the effective date of regulation, whichever is the later, and on that date stock in the cooperative allocated to more than 50% of the dwelling units in the structure or premises was held by the cooperative, or by another person owning more shares than those allocated to a single dwelling unit, or both, no certificate shall be issued for occupancy by a purchaser of stock so held or owned on such date, unless, at the time of issuance of the certificate, stock in the cooperative is owned or has been purchased by persons who are then tenants of at least 80% of the dwelling units in the structure or premises and are entitled by reason of stock ownership to proprietary leases of dwelling units in the structure or premises.

(iv) In all other cases, including those excepted from paragraph (b) (3) (ii) and (iii), the issuance of a certificate shall be pursuant to paragraph (b) (2).

(4) *Change of intention.* No landlord who has obtained a certificate relating to eviction under this section 6 (b) shall use

the certificate in connection with any action to remove or evict a tenant unless such removal or eviction is sought for the purpose specified in the certificate.

Any landlord whose intentions or circumstances so change that the premises, whose possession is sought, will not be used for the purpose specified in the petition or certificate shall immediately notify the Area Rent Director in writing and surrender the certificate, if issued, for cancellation.

* * * * *

(d) *Notices required*—(1) *Notices prior to action to remove tenant.* Every notice to a tenant to vacate or surrender possession of housing accommodations shall state the ground under this section upon which the landlord relies for removal or eviction of the tenant and the facts necessary to establish the existence of such ground. A written copy of such notice shall be given to the area rent office within 24 hours after the notice is given to the tenant.

No tenant shall be removed or evicted from housing accommodations by court process or otherwise, on any ground other than non-payment of rent, unless at least ten days prior to the time specified for surrender of possession and to the commencement of any action for removal or eviction, the landlord has given written notices of the proposed removal or eviction to the tenant and to the area rent office, stating the ground under this section upon which such removal or eviction is sought, the facts necessary to establish the existence of such ground, and specifying the time when the tenant is required to surrender possession.

The provisions of this paragraph (d) (1)

shall not apply if the eviction is pursuant to the terms of a certificate issued by the Administrator under the provisions of paragraph (b) of this section.

(2) *Notices at time of commencing action to remove tenant.* At the time of commencing any action to remove or evict a tenant, including an action based upon nonpayment of rent, the landlord shall give written notice thereof to the area rent office stating the title of the case, the number of the case where that is possible, the court in which it is filed, the name and address of the tenant, and the ground under this section on which removal or eviction is sought.

(e) *Local law.* No provision of this section shall be construed to authorize the removal of a tenant unless such removal is authorized under the local law.

Statement of Reasons Accompanying Amendment 17 to the Rent Regulation for Housing for the New York City Defense-Rental Area (Pike and Fischer, *OPA Service,* Vol. 14, pp. 200:393–T, U, and V) *

These amendments add a new paragraph to Section 6 (b) of the Rent Regulations for Housing applicable to evictions in connection with the sale of stock in a cooperative corporation or association. This is a form of organization whereby each stockholder is entitled, by reason of his ownership of stock, to occupy a dwelling unit in an apartment building or other multiple-unit structure or premises owned by the cooperative corporation.

With certain exceptions the amendments provide that no certificate shall be issued

* Pages T, U, and V of Volume 14 were distributed only to the Office of Price Administration.

for occupancy by a purchaser of stock in the cooperative (1) where the cooperative was organized on or after February 17, 1945, the effective date of the amendment, or (2) where the cooperative acquired its title or leasehold interest in the structure or other premises on or after that date, or (3) where the purchased stock originally was issued on or after that date. (In areas placed under control after February 17, 1945, the decisive date will be the effective date of the regulation.) The amendments recognize an exception where on the decisive date the cooperative was in the process of organization and the Administrator finds that substantial hardship would result from the failure to issue a certificate.

Where the cooperative was organized and acquired its title before February 17, 1945, the issuance of certificates is made to depend in part upon the ownership of the stock in the cooperative on that date. If stock allocated to more than 50% of the dwelling units was held by the cooperative, a certificate generally, will not be issued for occupancy by a purchaser of such stock. This is true also where this amount of stock was owned on February 17, 1945, by some person other than the cooperative who owned more shares than those allocated to a single dwelling unit, or where the combined holdings of the cooperative and such other person represented stock allocated to more than 50% of the dwelling units.

In any of these cases, however, the amendments permit the issuance of certificates if, at the time of such issuance, stock in the cooperative is owned or has been purchased by persons who are then tenants of at least 80% of the dwelling units.

This permits tenants of an apartment building or other multiple-unit premises to voluntarily organize a cooperative even though a small proportion of the tenants do not join in the plan.

In all cases where the issuance of a certificate is permissible, the decision is governed by Section 6 (b) (2) in its present form. The determination under Section 6 (b). (2) will take into account whether the organization is a true cooperative.

In recent months the problem of evictions and potential evictions in connection with the sale of stock in cooperative housing corporations has reached serious proportions. Apartment houses and other multiple-unit premises are being sold to cooperative corporations. These corporations in turn sell stock in the corporation which entitles the purchaser to a "proprietary lease" of a dwelling unit in the structure. In selling stock in the cooperative, tenants usually are first approached. They are under heavy pressure to purchase stock because the alternative is likely to be eviction in favor of the ultimate purchaser of the stock. If the stock is not purchased by a tenant, it is then sold to another person who obtains a proprietary lease of the tenant's dwelling unit and seeks possession of that unit for personal occupancy.

Substantially the same type of transaction is taking place by turning an ordinary real estate corporation which owns an apartment building into a cooperative corporation. The present owners of stock in such a corporation are selling stock under a cooperative plan whereby the purchaser becomes entitled to a proprietary lease. Again the transaction is likely to result either in the forced sale of the stock to

the present tenant or his eviction in favor of a third party purchaser of the stock.

In the past cooperative housing corporations were virtually unknown in most defense-rental areas. Since rent control there has been a tendency to make more frequent use of the device and there is every indication that this will accelerate.

In a few areas numerous cooperative housing corporations were organized in past years. During the depression many stockholders defaulted on the payments under their proprietary leases and the stock was taken back by the corporation. In some instances the stock was bought up by a third party for speculative purposes. Today many of these buildings are cooperative in name only. Some units still are occupied by tenant-stockholders but many if not most of the units are occupied by tenants renting directly from the corporation or other holder of stock. During recent months, as the housing shortage has become more acute, the cooperative corporations or other owners of this stock have begun to sell it to purchasers who become entitled to proprietary leases. The amendment prohibits eviction in connection with the sale of such stock only where at the present time the cooperative cannot be considered to have the essential characteristics of such an organization. Where the cooperative is one in name only and not in substance, as certainly is true where stock allocated to a majority of the dwelling units is held by the corporation or by another person, or both, the Administrator considers that the same treatment should be accorded as is given to a newly organized cooperative.

Since multiple-unit structures are involved in all these cooperative plans, the

carrying out of the plans means that there will be a mass eviction of tenants in the structure; or as an alternative the tenants will be forced to buy an interest which they may not want in order to retain occupancy. The Administrator deems these consequences inconsistent with effective rent control.

Such an eviction is not for substitution in occupancy of a true owner of the accommodations. The tenant-stockholder's interest in the dwelling unit he occupies has most of the characteristics of an ordinary leasehold interest. Under some plans the proprietary lease is for a long term, such as ninety-nine years, while under others it is for a relatively short term, such as one, three, or five years, with an option in the tenant to renew. Where long-term leases are used there frequently is a provision enabling the tenant to terminate the lease prior to expiration of the term. Thus, the tenant usually is in a position to give up his right to occupy the premises and escape any further liability on the obligations which an owner assumes when he acquires ownership of property.

The proprietary leases contain many of the clauses customarily found in ordinary leases. They are called leases and the tenant is referred to in the instrument as a tenant or lessee. Payments made under the leases are called rent. The leases prohibit assignment or subletting without consent of the lessor or perhaps of a certain percentage of the stockholders. The lessor is given the right to terminate the lease on default by the lessee in his obligations thereunder in much the same manner provided in the ordinary lease. The leases frequently provide that the lessor may use the summary proceedings which are available

to evict an ordinary tenant. An option is given the lessor to terminate the lease under circumstances inconsistent with a substantial property interest in the lessee.

The interest of the tenant-stockholder is so like that of an ordinary tenant as to present serious possibilities of evasion of the rent regulations. In areas where the housing shortage is acute a person will be willing to pay a substantial sum to buy stock in a cooperative simply as a means of obtaining or retaining shelter. Under such circumstances the amount paid for the stock actually is payment for occupancy of the accommodations.

In view of the dangers of evasion of the rent ceilings through such transactions and of the mass evictions which are likely to occur through the formation of new cooperatives and the revival of existing ones, it is the judgment of the Administrator that the issuance of the present amendments is necessary and proper in order to effectuate the purposes of the Emergency Price Control Act.

No provisions which might have the effect of requiring a change in established rental practices have been included in the rent regulations unless such provisions have been found necessary to achieve effective rent control and to prevent circumvention or evasion of the rent reguations and the Act. To the extent that the provisions of the rent regulations compel or may operate to compel changes in established rental practices, such provisions are necessary to prevent circumvention or evasion of the rent regulations and the Act.

Issued this 16th day of February 1945.

CHESTER BOWLES,
Administrator.

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